

HISTORY OF THE DIVERSION LAW

- Senate Bill 859, the diversion law, was created as another component of evidence to be submitted to Federal Court in North Carolina's request for relief from the oversight of a Special Master and to dismiss the Thomas S. class action lawsuit. SB 859 was believed to demonstrate that North Carolina was committed to preventing state psychiatric hospital admission for individuals with mental retardation.
- The diversion law prohibits the admission of persons with MR to State psychiatric facilities with limited exceptions and makes limited changes in the commitment process. The four Exception criteria are listed at the end of this document.
- The 122C-3 regulation includes dangerousness to himself or others. It has been understood that the diversion law has a more limited scope than the 122C-3 regulation, although it does not clearly define "extreme dangerousness". The diversion law regulation, 122C-261(f), focuses on dangerousness toward others, not self, and does not include property destruction in the definition of dangerousness. The 122C-261(f) regulation uses the specific terminology of "so extremely dangerous" while 122C-3 uses the general terminology "dangerous to himself or others".
- Also, the doctor who examines the individual is making a determination regarding whether the person meets the criteria for involuntary commitment. SB 859 does not change the responsibility of the physician to make this determination, and the law does not allow the LME to determine whether the person should be committed. The law does, however, indicate where a person may be admitted pursuant to an involuntary commitment. If the person being committed has mental retardation, then the LME should arrange an inpatient admission to a non-State hospital.
- The LME staff should use the "Worksheet for Requesting Exceptions" to help them consider all relevant issues before requesting an exception. The Division expects that there will be a non-State hospital available in almost every situation that is capable of providing appropriate treatment to dangerous clients. Requesting an exception to SB 859 should be considered as a last resort after seeking an alternative admission as close to the client's home community as possible.
- The following document is part of the protocol used in determining if someone meets the exception criteria. With a few changes, this protocol has been in use since the inception of the diversion law in 1997.

SENATE BILL 859

(122C-261(f), 122C-262(d), 122C-263(d)(2) regulations)

The Diversion Law (SB 859) prohibits the admission of individuals with mental retardation, or suspected mental retardation, and a co-occurring mental illness, to state psychiatric hospitals with limited exceptions. The exceptions must be determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (MH/DD/SAS) or his designee(s). The information you submit on this worksheet will be used to document that the requirements of SB 859 have been met and to support the development of rational and effective solutions to problems that may arise in the implementation of this law.

EXCEPTION CRITERIA

In the event an individual known or reasonably believed to have mental retardation and a co-occurring mental illness is transported to a State facility for the mentally ill, that individual shall not be admitted to that facility except as follows:

- (1) Persons described in G.S. 122C-266(b), i.e., **HB-95**; (court committed persons who have been charged with a violent crime and have been found incapable to proceed to trial).
- (2) Persons admitted pursuant to G.S. 15A-1321, i.e., **SB-43**; (court committed persons who have been found not guilty by reason of insanity).
- (3) Respondents who are so **extremely dangerous** as to pose a serious threat to others in the community or to other patients in community hospitals, as determined by the Division.
- (4) Respondents who are so gravely disabled by both multiple disorders and **medical fragility** or multiple disorders and **deafness** that alternative care is inappropriate, as determined by the Division.

INSTRUCTIONS FOR LME STAFF IN REQUESTING AN EXCEPTION TO THE 122C-261(f) LAW (THE DIVERSION LAW)

1. Try to arrange an admission to a non-State hospital. Document the hospitals called, reasons for denials, specific times of contact, and names of persons contacted. At least one diversion site must be contacted.
2. If an admission to a non-State hospital cannot be arranged, *and* you believe that the client qualifies for an exception, complete the Worksheet for Exceptions.
3. Fax the completed Worksheet to the appropriate State hospital Admitting Office. Send only pages one and two.

Hospital:	FAX#
Broughton Hospital:	828.433.2082
Cherry Hospital:	919.731.3793
Central Regional Hospital, Raleigh campus:	919.733.6444
Central Regional Hospital, Butner campus:	919.764.7420

SB859 FREQUENTLY ASKED QUESTIONS

1. **Q: Does SB859 apply to people under the age of 18 who have mental retardation?**
A: Yes. If LMEs are unable to arrange an admission to an appropriate non-state hospital for a child/youth who needs inpatient psychiatric treatment, the LME must follow the routine procedures for applying for an exception to SB859.
2. **Q: Does SB859 apply to Substance Abuse commitments?**
A: No, SB859 applies only to commitments of the mentally ill to facilities for the mentally ill.
3. **Q: If the physician at the State hospital examines someone and finds that s/he is mentally ill and dangerous to self or others, will the Division Director or his designee refuse to allow the person to be committed?**
A: No. In this situation, the doctor is making a determination regarding whether the person meets the criteria for involuntary commitment. SB859 does not change the responsibility of the physician to make this determination, and the law does not allow the LME or the Division Director's designee to determine whether the person should be committed. The law does, however, indicate where a person may be admitted pursuant to an involuntary commitment.
4. **Q: Does SB859 allow an exception to the "no admit" policy for individuals who are dangerous to self but not to others?**
A: No. SB859 does not include among the exceptions to the "no admit" policy those persons who are dangerous to self. Non-state hospitals routinely admit persons who are suicidal. It is more difficult to gain admission of clients who are dangerous to others, which is the reason that this exception was included in the law.
5. **Q: If a patient in a non-State hospital inpatient unit becomes too difficult for the hospital staff to handle, can the hospital transfer the patient to the State hospital?**
A: No. The non-State hospital must contact the patient's LME, which will then either provide support that will enable the hospital to keep the patient or arrange admission to another non-State hospital that can manage the patient or, as a last resort, request approval of an exception to SB859 so that the patient can be transferred to a State hospital.
6. **Q: What will happen if the patient is receiving private care and is not the client of any LME?**
A: Only LMEs may request exceptions to SB859. The hospital should contact the LME that services the county where the patient resides and request the assistance of the LME to do the diversion work.
7. **Q: If non-State hospitals agree to admit patients with mental retardation to their psychiatric units, do they then have to admit without regard to level of dangerousness?**
A: No, SB859 does not require non-State hospitals to admit anyone.
8. **Q: How do I get exception forms?**
A: The Division web site:
www.dhhs.stat.nc.us/mhddsas/developmentaldisabilities/mrmi/home.html
9. **Q: If a client is admitted to a State Hospital and it is later determined that he/she has a MR diagnosis and an exception was never requested/granted prior to the admission, do I have to request an Exception after the fact?**
A: No.

10. **Q: What happens if it is found that a client is diagnosed with Mental Retardation after being admitted to the State Hospital?**
A: The Hospital Liaisons will inform the division and provide us with supporting documentation so that the client can be added to the SB859 Database.
11. **Q: How do I get someone on the SB859 Database?**
A: Send a cover letter with supporting documentation, such as the IQ and Adaptive Skill test scores, to the Diversion Specialist at the Division via secure fax: 919-508-0955. Please note that an IQ score alone is not enough. An adaptive skills test such as the Vineland and an IQ score is needed.
12. **Q: How do I get a person's status changed on the SB859 Database? (For instance, someone is listed with a diagnosis of Mild MR and you have supporting documents that they do not have Mild MR.)**
A: Send a cover letter with supporting documentation, such as IQ and Adaptive Skills test scores, to the Diversion Specialist at the Division via secure fax: 919-508-0955.
13. **Q: If someone has a diagnosis of borderline intellectual functioning do I have to request an exception?**
A: No, this is not the same as a mental retardation diagnosis. The DSM IV Code V62.89, Borderline Intellectual Functioning states, "an IQ in the 71-84 range".
14. **Q: If I receive a call from a community hospital requesting an exception for a client that is not in the Mental Health System what do I do?**
A: The LMEs are the portals for exceptions, so you would proceed as you normally would with an individual that was in your system.
15. **Q: What if a person experiences a crisis in their county of residence vs. their county of Medicaid responsibility?**
A: The NC administrative code states that individuals will be admitted to the institutions which serve the region of the state which includes the person's "county of residence".
10A NCAC 28F .0101 (a)
16. **Q: Who do I contact to find out if someone is on the SB859 Diversion List?**
A: Check with your Crisis Coordinator, DD Coordinator, and/or MR/MI Coordinator first. If you are still not able to find out if someone is on the list you can call any State Hospital Admissions Office. They have access to the SB859 Database 24 hours a day, seven days a week.